

THE CITY OF ROCKVILLE PLANNING COMMISSION

ROCKVILLE PIKE DISTRICT CODE

Meeting 08-2013

T R A N S C R I P T

O F

P R O C E E D I N G S

ROCKVILLE CITY HALL

Rockville, Maryland

April 24, 2013

BEFORE:

JERRY CALLISTEIN, Chairman

DON HADLEY, Commissioner

KATE OSTELL, Commissioner

DAVID HILL, Commissioner

DION TRAHAN, Commissioner

JACK LEIDERMAN, Commissioner

JOHN TYNER, Commissioner

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**ORIGINAL**

STAFF PRESENT

Andrew Gunning

Marcy Waxman

David Levy

Cindy Kebba

Deanne Mellander

Clark Larson

C O N T E N T S

SPEAKER

PAGE

Joe Lynott

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P R O C E E D I N G S

1  
2 CHAIRMAN: Welcome back everyone. We are  
3 continuing meeting 08-2013 of the City of Rockville Planning  
4 Commission. We have just finished the Rockville Pike's Plan  
5 portion of our public hearings for the evening, and are now  
6 proceeding on to the proposed Rockville Pike District Zone  
7 Zoning Text Amendments. We have two people who have signed  
8 up to make statements, and then we will open the floor to  
9 anyone else who wishes to speak. So, first on my list I have  
10 Mr. Joe Lynott of Lynott, Lynott & Parsons, P.A.

11 MR. LYNOTT: Good evening.

12 CHAIRMAN: Good evening.

13 MR. LYNOTT: I'm Joe Lynott, I'm an attorney here  
14 in Rockville, and I'm here to speak tonight on a particular  
15 section of the new Rockville Pike District Code, and that's  
16 Section 2513.1.03. And for those of you, that's the section  
17 that pertains to new non-conformities under the new Code.  
18 And respectfully, I'm here to suggest that this section of  
19 the Code is flawed in two respects, first is it fails to  
20 grandfather in existing lawful developments throughout the  
21 Pike; and secondly, this new Code section would impose a  
22 counter-productive amortization period upon development non-  
23 conformities in and along this entire two-mile stretch here.

24 As to the first point, the current text only  
25 recognizes as permitted non-conformities those buildings and

1 sites that conform to the development standards and  
2 requirements in effect, quote, immediately prior to, unquote,  
3 the date that the new Code may ultimately be adopted. And as  
4 we know, the current Zoning Ordinance was adopted just back  
5 in March of 2009, and there have not been many buildings  
6 constructed along the Pike during that period. The effect of  
7 this is that the vast majority of buildings there have been  
8 constructed under periodic iterations of the development  
9 standards over the last 40 years, and these buildings will by  
10 definition no longer be development, lawfully permitted  
11 development non-conformities. And the adoption of the  
12 current text would surely have the unintended impact of  
13 causing most of these still economically viable buildings to  
14 no longer be recognized as development non-conformities, and  
15 the failure to grandfather these in fully would cause a  
16 severe and certain impact on these buildings, resulting in  
17 their inability to refinance these projects, or to  
18 restructure their debt to make these improvements and  
19 maintain their own property. So, I mean, so this problem I  
20 think perhaps was unintended, and I think it could be  
21 reasonably and appropriately remedied by amending the text in  
22 the way that we've submitted in our written testimony, and  
23 I've submitted a red lined section of this showing some  
24 proposed changes that might cure this part of the problem.

25       The second issue here has to do with the

1 amortization period that's been imposed under the new Code.  
2 Even with respect to those few buildings which may be  
3 recognized as legally permitted non-conformities, the current  
4 text would impose a draconian 10-year amortization period  
5 after which these buildings could not be reconstructed to  
6 their current density or configuration in the event of a  
7 fire, flood, or other casualty. The practical impact of this  
8 would be both dramatic and counter-productive. As a matter  
9 of ordinary commercial practice, as you all may be aware,  
10 parties seeking to refinance their properties come to the  
11 city like they do any other jurisdictions and say give me a  
12 zoning compliance letter showing that my property is in  
13 compliance with the Zoning Ordinance, and from a lender's  
14 standpoint can be reconstructed in the event of one of these  
15 casualties. The inability to provide that letter is going to  
16 result in shutting down mortgage lending up and down the  
17 Pike.

18 CHAIRMAN: Okay, sir, that's your time.

19 MR. LYNOTT: Okay. Inevitably, this is going to  
20 lead to mortgage defaults and a decline in the ability of  
21 owners to maintain their properties until such time as they  
22 are ripe for development. And given the optimistic at best  
23 funding assumptions upon which the new plan is based with the  
24 cost of the right of ways, cost of VRT lines going through  
25 here, we don't want to put properties up and down the Pike in

1 this box here where we're going to wind up with a lot of  
2 property in disrepair, and --

3 CHAIRMAN: Okay.

4 MR. LYNOTT: -- properties that are going to be,  
5 result in a --

6 CHAIRMAN: Thank you, sir.

7 MR. LYNOTT: -- stagnation -- thank you.

8 CHAIRMAN: Thank you. Any questions of this  
9 gentleman?

10 COMMISSIONER LEIDERMAN: Yes, sir. You're going to  
11 submit something to us with some suggestions about this?

12 MR. LYNOTT: I submitted to the City  
13 electronically, and I have brought a few copies of it, my  
14 written testimony, but --

15 CHAIRMAN: That would be great.

16 MR. LYNOTT: -- I've written a draft of the text.

17 CHAIRMAN: That would be great. Yes. Thank you.

18 UNIDENTIFIED STAFF SPEAKER: We received written  
19 testimony today.

20 CHAIRMAN: Okay.

21 UNIDENTIFIED STAFF SPEAKER: It came in today.

22 CHAIRMAN: Yes, so, if you have --

23 COMMISSIONER LEIDERMAN: I appreciate it.

24 MR. LYNOTT: (Indiscernible 1:27:52.)

25 CHAIRMAN: Pass them around. Does everybody have

1 one?

2 COMMISSIONER LEIDERMAN: Also, it would be helpful  
3 if there are any, are there any specific examples.

4 MR. LYNOTT: It would probably be hard to look up  
5 and down the Pike and find a property that wouldn't be an  
6 example of this. Really, we're talking about under the first  
7 issue that I raised here we're only talking about those few  
8 properties if any that have been built since 2009 that would  
9 be a legal non-conformity, that's the first issue. So,  
10 almost every other building is an example of the first  
11 problem here.

12 The second issue goes for any property along the  
13 Pike with a 10-year amortization period. Even the newer  
14 better buildings along the Pike here go in and refinance  
15 their property, get a 10-year loan two years from now the  
16 lender's going to ask for, I've got a 10-year term on my  
17 loan, I may be as a lender the owner of that property if  
18 something goes wrong with it, I'm not going to make that loan  
19 because I can't rebuild the project that's there. I mean,  
20 surely that's not what would happen, the impact would be  
21 punitive on any property owner up and down the Pike, and  
22 counterproductive to what we're trying to accomplish here  
23 with the new Rockville Pike Plan.

24 COMMISSIONER LEIDERMAN: Are there some examples of  
25 how other jurisdictions have handled this particular --

1 MR. LYNOTT: Yes, and in our text here we propose,  
2 as is common here, it says that properties that were lawfully  
3 developed under the applicable development standards when  
4 they were constructed can be lawfully rebuilt in the event of  
5 a casualty, and that means that if something happens these  
6 buildings can be reconfigured, a lender can make a loan  
7 knowing that I could at least rebuild what was there to  
8 secure my collateral, and until those properties are then  
9 ripe for redevelopment because the funding's come through for  
10 the acquisition of these rights of way, then we're much  
11 closer to the date that this vision may become a reality,  
12 then in the meantime in this 20-year period, at least,  
13 respectfully, that it might take to implement this vision  
14 here we're not going to put these property owners in this  
15 bind.

16 COMMISSIONER LEIDERMAN: Thank you.

17 CHAIRMAN: Don?

18 COMMISSIONER HADLEY: Just to clarify for my fellow  
19 Commissioners, rebuilding in the sense that if there's a fire  
20 or other casualty of the building, not a matter of we want to  
21 tear it down and build a new shopping center, but we're  
22 simply assuring the lender that if there's a destruction of  
23 this rentable space that's producing the incomes that  
24 supports the mortgage on the building that we'll be able to  
25 use insurance money and be able to restore the building to



1 productive life, that's the issue?

2 CHAIRMAN: Any other questions?

3 MR. LYNOTT: Thank you very much.

4 CHAIRMAN: All right. Thank you. Mr. Gunning, I  
5 have the original signed copy, do you need that?

6 MR. GUNNING: (Indiscernible.)

7 CHAIRMAN: Okay. All right. Next on our list is  
8 Jim Whalen of Whalen Investment Properties.

9 UNIDENTIFIED STAFF SPEAKER: Mr. Whalen was here  
10 earlier, he's left, he was mis-assigned to speak on the Code,  
11 but he really wanted to speak on the Plan.

12 CHAIRMAN: Okay.

13 UNIDENTIFIED COMMISSIONER: That's his copy. Give  
14 him his copy.

15 CHAIRMAN: That's, okay, that's my copy, and this  
16 is the original. Okay. In that case is there anyone else  
17 who wishes to speak? Going once, going twice, going three  
18 times. Sold. All right. Then I will entertain the motion  
19 to continue this hearing.

20 UNIDENTIFIED COMMISSIONER: Until?

21 CHAIRMAN: Until May 22nd.

22 COMMISSIONER LEIDERMAN: Second.

23 CHAIRMAN: Second. Okay. All in favor?

24 (A chorus of ayes was heard.)

25 CHAIRMAN: Any opposed? We are continued until May

1 22nd. Thank you. All right. Moving on. Okay. Thank you  
2 all.

3 COMMISSIONER OSTELL: Can I just ask Staff one  
4 question --

5 CHAIRMAN: Certainly.

6 COMMISSIONER OSTELL: -- about this. In the public  
7 outreach section in your memo I didn't see anything about  
8 meeting with Hungerford, or the Kennedys on Talbot or  
9 Templeton, or down along East Jefferson, and they along with  
10 Twinbrook are certainly affected. I'm just wondering, has  
11 outreach been made, are they just not interested?

12 MR. LEVY: Outreach has been attempted, certainly  
13 to the Hungerford neighborhood, both from our neighborhood  
14 resources folks and by myself. It's been a little bit hard  
15 to, there's been no public meeting that's been held during  
16 this period, I don't know if any Commissioners could help in  
17 that regard. I have e-mailed personally to a couple of  
18 different contacts, one in particular who was helpful the  
19 last time --

20 COMMISSIONER OSTELL: Yes.

21 MR. LEVY: -- when we did this, and there was an  
22 annual meeting coming up, and I think -- did you attend that  
23 one last time?

24 COMMISSIONER OSTELL: Yes, that just got active.

25 MR. LEVY: But we haven't been able to get it. On

1 the other ones, the Templeton, we haven't had meetings, we've  
2 reached out in various ways, but in general, in the general  
3 media I don't know that we've reached out specifically to  
4 Templeton Place. The condo.

5 MS. KEBBA: Yes, I did talk with the President of  
6 the, I think it's the Village Green Condominiums, and sent  
7 her a copy of the plan, and she got back to me and said that  
8 she was pleased with the plan generally and didn't have any  
9 comments at the time. She was concerned about Jefferson  
10 Street going through, but when she read the language in the  
11 plan she was less concerned, was her comments to me. So, I  
12 don't know if she'll testify in the future, or anybody else  
13 will, but I'm hoping she shared that, the plan with the rest  
14 of the Board.

15 COMMISSIONER OSTELL: Have cards gone out to all  
16 those HOAs that are back in there? I'm not even sure how  
17 many there are. Have cards gone out? Or something, or some  
18 kind of contact to the HOAs, I know --

19 MS. KEBBA: We've been working with the  
20 neighborhood resources group to try to get through to as many  
21 HOAs and associations and neighborhood groups as we possibly  
22 can, and, you know, we've all been working --

23 MR. LEVY: And Rockville Reports goes to all of  
24 them, and it's been --

25 MS. KEBBA: Yes.

1 MR. LEVY: -- announced in all the Rockville  
2 Reports.

3 MS. KEBBA: Yes.

4 COMMISSIONER OSTELL: No, I just, it's --

5 MR. LEVY: So, we --

6 COMMISSIONER OSTELL: -- it's just possible --

7 MR. LEVY: -- didn't do, you know, in the past  
8 we've had more budget to do, mass mailings, and that's not in  
9 our budget to do additional mailings, you can spend many  
10 thousands doing that.

11 COMMISSIONER OSTELL: Yes, I know. I'm aware.

12 MR. LEVY: So, we've been relying on the things  
13 that are going out anyway, any Rockville Reports, and phone  
14 calls, and e-mails, and --

15 MS. KEBBA: And Mr. Callistein has an upcoming  
16 feature on the Rockville channel in May, so hopefully that  
17 will generate some more interest.

18 CHAIRMAN: That's when it's coming out?

19 MS. KEBBA: In May.

20 COMMISSIONER OSTELL: Well, you've been fairly  
21 recently.

22 MR. LEVY: Yes. Considering the folks who cannot  
23 actually I'll be at the Richard Montgomery PTSA at their next  
24 meeting to discuss. We continue to offer up, but --

25 COMMISSIONER OSTELL: Okay.

1 MR. LEVY: -- if you have specific suggestions, or  
2 even help in areas we haven't gotten to, we'd be more than  
3 happy to --

4 MS. KEBBA: We've been to 18 meetings so far, I  
5 think, since the plan was released, or actually since before  
6 the plan was released, and we're scheduled for at least five  
7 or six more, and we continue to try to get out there, so --

8 COMMISSIONER OSTELL: Yes, no, there's a long list,  
9 so I'll just put a plug out if anybody from the communities  
10 along the Pike, along East Jefferson, call the Staff.

11 CHAIRMAN: And even if they're not.

12 COMMISSIONER OSTELL: Look at the plan.

13 CHAIRMAN: Yes, make your voice heard.

14 COMMISSIONER OSTELL: Yes. Thank you.

15 CHAIRMAN: Make their day. All right. Well, let's  
16 move on, and we may still make it out of here by 10 o'clock  
17 tonight.

18 (Whereupon, the proceedings were continued until  
19 May 22, 2013.)

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DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the City of Rockville's Planning Board in the matter of:

ROCKVILLE PIKE DISTRICT CODE

Meeting 08-2013



By: \_\_\_\_\_

Date: May 3, 2013

Paula Underwood, Transcriber